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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,704	06/28/2001	Masao' Noguchi	MAT-8158US	5140

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EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 10/23/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/894,704

Applicant(s)

NOGUCHI ET AL.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 15-18 and 40-64 is/are pending in the application.
- 4a) Of the above claim(s) 42-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-18, 40-50 and 52-64 is/are rejected.
- 7) ☒ Claim(s) 51 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 20 June 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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1. Applicant's election of Species I in Paper No. 11 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Accordingly, claims 42-47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b).

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

3. The proposed drawing correction filed on June 20, 2002 has been approved.

4. The disclosure is objected to because of the following informalities: page 26, line 14, "27" apparently should be --27A--; page 27, lines 7 and 16, "27" apparently should be --27A--; and page 28, line 13, "Fig. 6" apparently should be --Fig. 3--, and "nozzle 6" apparently should be --nozzle 15--.

Appropriate correction is required.

X 5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "arm axis" set forth in claim 15, "connecting means" set forth in

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claim 17, "extension and contraction means" set forth in claim 18, and subject matter set forth in claim 50, ~~54~~ ^{not addressed} and 55, could not be found in the specification.

- X 6. Claims 56-64 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 56 recites, in part, "a substantially flat spray of water in a substantially vertical plane." This subject matter is not found in the original disclosure and is therefore considered to be new matter.

7. Claims 15-18 and 48 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 15 recites, in part, "said nozzle header rotates about the arm axis." Implementation of this subject matter is neither disclosed in the instant application nor evident to the examiner. Claim 48 is similarly worded.

8. Claims 17, 18 and 49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 is unclear as to the relationship between the "connecting means" on line 2 thereof, and the "arm supported movably" structure on line 3 of claim 15 or the "header rotates about" structure on line 5 of claim 15.

Claim 18 is unclear as to the relationship between the "connecting means" on line 2 thereof, and the "arm supported movably" structure on line 3 of claim 15.

Claim 49 appears redundant to claim 40.

9. The claim hierarchy does not appear to be in accordance with MPEP 608.01(m). Claims remaining at allowance may require renumbering.

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshida et al.

The Yoshida et al. (Yoshida) reference (Fig. 22) discloses a shower apparatus comprising: a main body 28; and an arm 47 supported movably (col. 18 lns. 10-14), and including an arm axis (perpendicular to 47) and a rotating 4a header (extending from 4a) having nozzles 8, as claimed.

12. Claims 40, 41, 49, 50 and 52-55 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshida.

The Yoshida reference (Fig. 31) discloses a shower apparatus comprising: a main body (supporting 47); a plurality of arms 47 supported movably (col. 18 lns. 10-14) towards and away (col. 18 lns. 62-64) from each other; and spray nozzles 8, as claimed.

13. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida.

Although the arms of the Fig. 31 embodiment do not include a header, as claimed, attention is directed to the Fig. 22 embodiment which further includes a header (extending from 4a). Therefore, in consideration of the Fig. 22 embodiment, it would have been obvious to one of ordinary skill in the art to associate a header with the Fig. 31 embodiment in order to facilitate use.

14. Claims 56-62 are provisionally rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida and JP 10-028656.

The Yoshida reference (Fig. 11) discloses a shower apparatus comprising: a plurality of movable (col. 18 lns. 10-14) arms 47; a water source 30,31; a plurality of first nozzles 45,46,48; and a main body 28. Therefore, Yoshida teaches all claimed elements except for the nozzle spray shape.

Although the spray shape of the Yoshida nozzles may not be "a substantially flat spray of water in a substantially vertical plane", as claimed, attention is directed to the JP 10-028656 (Shirai) reference which discloses analogous nozzles 45,46,48 which apparently further produce "a substantially flat spray of water in a substantially vertical plane" in the same sense as with applicants' nozzles. Therefore, in consideration of Shirai, it would have been obvious to one of ordinary skill in

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the art to associate a differently shaped spray with the Yoshida nozzles in order to facilitate use.

15. Claims 63 and 64 appear to be free of the prior art of record.

Claim 51 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

16. Applicant's arguments with respect to claims 15, 40 and 56 have been considered but are moot in view of the new ground(s) of rejection.

17. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated

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from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

18. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 703/308-1506 who can be most easily reached Tuesday through Thursday.

A handwritten signature in black ink, appearing to read 'Robert M. Fetsuga', with a stylized flourish at the end.

Robert M. Fetsuga
Primary Examiner
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